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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Revision of the Commission's Rules)
To Ensure Compatibility With)
Enhanced 911 Emergency)
Calling Systems)

CC Docket No. 94-102
RM-8143

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**COMMENTS IN SUPPORT OF PETITIONS FOR RECONSIDERATION
OF CORRCOMM, LLC., AND THE RURAL CELLULAR ASSOCIATION**

DiGiPh PCS ("DiGiPh"),¹ by its attorneys, respectfully submit its comments supporting the Petitions for Reconsideration of Rural Cellular Association ("RCA") and CorrComm, LLC ("CorrComm") that were filed in response to the Second Memorandum Opinion and Order in the above captioned matter.²

I. BACKGROUND

In the *Second Memorandum Opinion & Order*, the Commission, *inter alia*, revised the E-911 rules to remove the prerequisite that a carrier cost recovery mechanism be in place before a CMRS carrier is obligated to provide E-911 service in response to a valid Public Safety Answering Point

¹DiGiPH was the successful bidder for eight (8) BTAs in the Commission's original C Block Broadband PCS auction.

²Revision of the Commission's rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, RM-8143, *Second Memorandum Opinion & Order*, FCC 99-352, (rel. December 8, 1999) ("*Second Memorandum Opinion & Order*"). Public Notice of the CorrComm and RCA Petitions was given in Corrected Report No. 2391, *Public Notice*, rel. March 1, 2000, which corrected an earlier Public Notice with the same report number that was released on February 29, 2000.

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(“PSAP”) service request.³ In removing the cost recovery mechanism pre-condition, however, the Commission emphasized that its action will have no effect on states or localities that already adopted cost recovery mechanisms. The Commission also stated that it had no intention to discourage states and localities from implementing cost recovery or cost sharing mechanisms as an effective way of expediting wireless E-911 availability, especially in rural areas.⁴

II. Petitions for Reconsideration

A. Rural Cellular Association

In its Petition, RCA argues that, eliminating the cost recovery precondition for E-911 implementation will impose a severe and unfair cost burden on small and rural carriers, and their customers, and that the Second Memorandum Opinion and Order ignores this disparate impact on small, rural carriers. Specifically, RCA argues that a “self recovery” method, such as the “bill and keep” method is inequitable to smaller carriers and their customers because the per-subscriber cost of implementing wireless E-911 is substantially higher for small, rural carriers than it is for their much larger regional and quasi-national counterparts. Additionally, RCA points out that “bill and keep” is non-compensatory because it is a means of recovering carrier costs, not PSAP costs.

Finally, contrary to the Commission’s reasoning that its decision is not intended to discourage states from implementing carrier cost recovery mechanisms but only relieve them of the requirement to do so, RCA contends that, rather than implement cost recovery mechanisms, states will simply elect to leave cost recovery to individual carriers in order to speed E-911 service deployment. At a minimum, RCA requests that the Commission establish an expedited waiver process for E-911

³*Second Memorandum Opinion & Order* at ¶¶ 3-6, 19-23.

⁴*Id.*

implementation to cover small, rural carriers serving jurisdictions that lack carrier cost recovery mechanisms and where self-recovery of service costs will be unduly burdensome to these carriers and their customers.

B. CorrComm

CorrComm also requests that elimination of the requirement that Phase II of wireless E-911 implementation be conditioned on adoption of a cost recovery mechanism be reconsidered. CorrComm is a “small CMRS carrier,” providing cellular service in the Alabama 1 RSA and projects that, by year end, it is likely to have no more than 20,000 subscribers.⁵ CorrComm indicates that the costs of implementing an Automatic Location Information (“ALI”) E-911 system are disproportionately higher for smaller carriers because they must be spread over a smaller number of subscribers with no corresponding revenue enhancement. To minimize the burden these costs impose on smaller carriers like itself, CorrComm states that the Commission should have defined the E-911 service as a “universal service” as the 1996 Telecommunications Act permits.⁶ This classification will make E-911 service eligible for either state or federal universal service funding support, thereby spreading the costs of implementing E-911 services over all telecommunications carriers and, ultimately, their customers.

Additionally, CorrComm states that the Commission failed to adequately address the significant adverse consequences of its action on small businesses as the Final Regulatory Flexibility Analysis of the Regulatory Flexibility Act requires.⁷ Contrary to the Commission’s cavalier

⁵ See CorrComm Petition at 3. According to the 1990 U.S. Census, there are only 175, 000 people in the identified RSA.

⁶47 USC § 254(b)(3).

⁷5 U.S.C. § 604.

conclusion that a cellular carrier may simply pass any cost on to its customers, CorrComm calculates that, assuming a five-year amortization, the Commission's recommendation implies a rate increase of 5-15 percent for each of CorrComm's projected 20,000 subscribers.⁸ Finally, CorrComm argues that the Commission's action in eliminating the cost recovery requirement is anti-competitive and in violation of the 1996 Telecommunications Act because it imposes a more substantial burden on wireless carriers (who must now bear the costs of the technology and infrastructure needed to pinpoint a mobile subscriber) than on wireline carriers (who incur relatively minimal incremental costs to identify the fixed location of their subscribers). CorrComm contends this difference unfairly vests the wireline carrier with a "technological" advantage over a wireless carrier and, therefore, is in violation of the Congressional intent to promote competition in the telecommunications industry.⁹

III. The Commission Erred In Eliminating The Carrier Cost Recovery Pre-condition To A Carrier's Obligation to Provide Wireless E-911 Service

DiGiPh shares the concerns raised by both RCA and CorrComm regarding the Commission's decision in the *Second Memorandum Opinion & Order* to drop the requirement that a carrier cost recovery mechanism be in place before a CMRS carrier can be obligated to provide wireless E-911 service. The Commission's decision will adversely affect the financial condition of small and rural carriers because the technology and infrastructure costs they incur to become E-911 capable will be substantial and must be allocated among subscriber populations that are small both in an absolute sense and relative to their regional and quasi-national rivals. As a result, small and rural carriers will

⁸Considering that the Commission's CMRS Competition Reports show that commercial mobile wireless prices are generally declining, the pass-through rate increase advocated by the Commission is likely to depress demand for CorrComm's service, shrink its subscriber and revenue base, and, as a result, seriously degrade its financial condition.

⁹See 47 U.S.C. §§ 257(a) and (b).

be compelled to impose on their customers “pass through” rate increases that are excessive, both in absolute and relative terms. The Commission itself admits that, by eliminating the carrier cost recovery prerequisite, some costs “will likely be higher” in rural areas.¹⁰

That an exogenous increase in a rural wireless carrier’s access and/or air time rates is likely to have a substantial detrimental effect on demand, revenues and profits appears self-evident. Although unaware of concrete empirical data in this area, DiGiPH is confident that its “own price elasticity of demand” is high, as is that of other rural carriers that compete principally with regional and multi-regional carriers—*i.e.*, the carriers who will incur a comparatively minimal per subscriber cost to implement wireless E-911 service.¹¹ Stated differently, if their E-911 rate increases are not matched by their rivals in the marketplace (which, as already seen, is unlikely) rural carriers will probably experience significant defections in their subscriber ranks.¹² Any anticipated increase in revenue attributable to the “pass through” rate hikes necessitated by the *Second Memorandum Opinion and Order*, paradoxically, may be partially, completely or more than offset by declines in subscribership the rate increases engender.

¹⁰*Second Memorandum Opinion & Order* at para. 57.

¹¹The Commission frequently considers “own price elasticity of demand” in its analyses and decisions. *Motion of AT&T to be Declared Non-Dominant for International Service* 13 FCC Rcd 21501, 13 CR 929 (1998) at ¶ 9.

¹²Competition among multiple cellular, PCS and SMR carriers has resulted in stable or declining wireless service rates. Indeed, this trend commenced *before* PCS service was even available in the marketplace. *See* Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services. 10 FCC Rcd 8844, 78 RR 2d 1322 (1995). The exogenous rate increases that small rural carriers will be forced to endure as a result of the *Second Memorandum Opinion and Order* will contrast sharply with the general price trend, increasing the likelihood that these carriers’ subscribers will flee to larger providers who either absorb the E-911 costs or recapture them with substantially smaller rate increases.

One goal of the 1996 Telecommunications Act¹³ was to promote competition to provide customers with the highest quality telecommunication services at a reasonable cost. The Commissions decision, however, constrains competition by placing additional cost burdens upon small rural carriers and their customers. Larger carriers, already enjoying many competitive advantages, will reap another competitive benefit because their per subscriber cost of implementing wireless E-911 is substantially less than that incurred by the DiGiPHs and CorrComms of the wireless industry. The rule places small and rural wireless carriers at a competitive disadvantage with not only larger wireless carriers but also wireline carriers who already enjoy technological advantages over their wireless competitors. Ultimately, this will affect competition because many small and rural carriers may not be able to financially compete with larger wireless carriers and wireline carriers, constricting consumer choice.

In its Petition for Reconsideration, CorrComm urges the Commission define wireless E-911 service as a universal service under Section 254(c)(1) of the Telecom Act, which will make it eligible for either state or federal universal support. Under this concept, all costs of implementing wireless E-911 services are allocated proportionately among all interstate or intrastate telecommunications carriers. This approach will certainly be fairer to small business and their customers because all wireless E-911 implementation costs will be funded by existing universal support mechanisms.

There is no doubt that the Commission's rule change will significantly and unfairly burden rural carriers and rural customers. Removing the cost recovery prerequisite not only results in greater costs for small and rural carriers and their customers, but also hurts the ability of small

¹³47 U.S.C. 151 *et seq.*

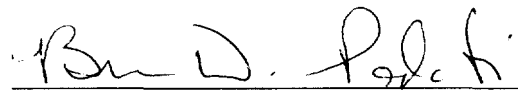
businesses to compete in the telecommunications market place. Therefore, the Commission should reverse its decision to change the wireless E-911 rules and reinstate the cost recovery precondition.

IV. Conclusion

For the reasons discussed herein, DiGiPh respectfully requests the Commission to grant RCA's and CorrComm's Petitions for Reconsideration.

Respectfully submitted,

DIGIPH PCS, INC.

A handwritten signature in black ink, appearing to read "Michael K. Kurtis", is written over a horizontal line.

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Dated: March 22, 2000

CERTIFICATE OF SERVICE

I, Kathleen A. Stone, a secretary with the firm Kurtis & Associates, P.C., do hereby certify that I have this 22nd day of March, 2000, had copies of the foregoing "COMMENTS IN SUPPORT OF PETITIONS FOR RECONSIDERATION OF CORRCOMM, LLC., AND THE RURAL CELLULAR ASSOCIATION" sent via First Class United States Mail, postage prepaid to the following:

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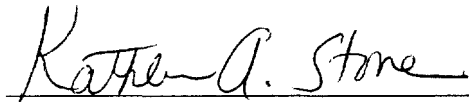
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